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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,461	03/11/2004	Thane Aaron Arheart	34432	6108

7590

10/19/2005

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EXAMINER

KENNEDY, JOSHUA T


ART UNIT

PAPER NUMBER

3679

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/798,461	<b>Applicant(s)</b> ARHEART, THANE AARON	
	<b>Examiner</b> Joshua T. Kennedy	<b>Art Unit</b> 3679	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-25 is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                         |                                                                             |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                                |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____                                                             | 6) <input type="checkbox"/> Other: _____                                    |



### **DETAILED ACTION**

Claims 1-25 have been examined.

#### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the alternative embodiments of the first and second brackets of Claims 18 and 21 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

The disclosure is objected to because of the following informalities:

On Page 6, Line 12, "FIG.s" should be change to –FIG's.--.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 8, 10 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear as to what of the third member is perpendicular to the fourth member. According to Figure 1, the plates of the third and fourth members appear perpendicular to one another.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Schluter (U.S. Patent Application Publication 2002/0059764 A1).

As to Claim 1. Schluter discloses an expansion joint cover operable to accommodate movement of a first surface with respect to a second surface, the cover comprising:

a first bracket (1, left side) presenting a first mating member (12) and capable of being rigidly attached to one of the first surface, the second surface, and a cover plate (Examiner considers the bracket with mating members, though they are rotatable with the surfaces, to be stationary, hence rigid);

a second bracket (1, right side) presenting a second mating member (12) and capable of being rigidly attached to another one of the first surface, the second surface, and the cover plate (Examiner considers the bracket with mating members, though they are rotatable with the surfaces, to be stationary, hence rigid); and

a central bracket operable to be installed between the first and second brackets, the central bracket including -

a third mating member (3) operable to mate with the first member, slide with respect to the first member, and rotate with respect to the first member, and

a fourth mating member (2) operable to mate with the second member, slide with respect to the second member, and rotate with respect to the second member.

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As to Claim 4. Schluter discloses fourth member presenting a cylindrical socket (24) with a longitudinal slit.

As to Claim 5. Schluter discloses the second member presenting a cylindrical plug (14) operable to fit within the socket.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-3, 6-7, 9, 11, 12, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schluter.

As to Claims 2 and 3. Schluter discloses the cover substantially as claimed, but does not disclose the first member presenting a cylindrical socket with a longitudinal slit. Nor does Schluter disclose the third member presenting a cylindrical plug operable to fit within the socket. However, the referenced prior art discloses the first member (1) having a cylindrical plug (14) operable to fit within the sockets (34) of the third member (3). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify each plug and socket element as disclosed by the applicant by reversing which member contains the plug portion and which contains the socket

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portion. These are interchangeable elements. The reversal of components in a prior art reference, where there is no disclosed significance to such reversal, is a design consideration within the skill of the art. In re Gazda, 219 F.2d 449, 104 USPQ 400 (CCPA 1955); In re Japikse, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950).

As to Claims 6 and 7. Schluter discloses the cover substantially as claimed, but does not disclose the second member presenting a cylindrical socket with a longitudinal slit. Nor does Schluter disclose the fourth member presenting a cylindrical plug operable to fit within the socket. However, the referenced prior art discloses the second member (1) having a cylindrical plug (14) operable to fit within the sockets (24) of the fourth member (2). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify each plug and socket element as disclosed by the applicant by reversing which member contains the plug portion and which contains the socket portion. These are interchangeable elements. The reversal of components in a prior art reference, where there is no disclosed significance to such reversal, is a design consideration within the skill of the art. In re Gazda, 219 F.2d 449, 104 USPQ 400 (CCPA 1955); In re Japikse, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950).

As to Claims 9 and 12. Schluter discloses the cover substantially as claimed, but does not disclose the first member presenting a first cylindrical socket, nor is the third member presenting a first cylindrical plug operable to fit within the first socket disclosed. However, disclosed is the fourth member (2) presenting a second cylindrical socket

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(24), and the second member (1) presents a second cylindrical plug (14) operable to fit within the second socket. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify each plug and socket element as disclosed by the applicant by reversing which member contains the plug portion and which contains the socket portion. These are interchangeable elements. The reversal of components in a prior art reference, where there is no disclosed significance to such reversal, is a design consideration within the skill of the art. In re Gazda, 219 F.2d 449, 104 USPQ 400 (CCPA 1955); In re Japikse, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950).

As to Claims 11 and 14. Schluter discloses each plug including at least one bearing capable of reducing friction between the plugs and the sockets (15).

### **Response to Arguments**

Applicant's arguments filed 9/23/2005 have been fully considered but they are not persuasive.

As to Claims 1-25, Applicant argues that:

*the "brackets" disclosed by Schluter are not operable to rigidly attach*

Examiner respectfully disagrees as to Claims 1-14, because Examiner considers the bracket with mating members, though they are rotatable with the surfaces, to be stationary, hence rigid.



Applicant additionally argues that:

*Schluter does not even disclose or suggest a cover plate.*

Examiner respectfully disagrees as to Claims 1-14, because Examiner considers the central bracket to act as a cover plate.

Applicant additionally argues that:

*The Examiner utilized a fabricated definition of "bearing"*

Examiner respectfully disagrees as to Claims 11 and 14, because a bearing as defined in Webster's dictionary is a supportive element, which the spacing bridge of Schluter is.

Applicant additionally argues that:

*the claimed bearing is operable to reduce friction*

Examiner respectfully disagrees, because a recitation with respect to the manner in which an apparatus is intended to be employed does not impose any structural limitation upon the claimed apparatus which differentiates it from a prior art reference disclosing the structural limitations of the claim. In re Pearson, 494 F.2d 1399, 181 USPQ 641 (CCPA 1974); In re Yanush, 477 F.2d 958, 177 USPQ 705 (CCPA 1973); In

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re Finsterwalder, 436 F.2d 1028, 168 USPQ 530 (CCPA 1971); In re Casey, 370 F.2d 576, 152 USPQ 235 (CCPA 1967); In re Otto, 312 F.2d 937, 136 USPQ 458 (CCPA 1963); Ex parte Masham, 2 USPQ2d 1647 (BdPatApp & Inter 1987).

is an intended use.

Applicant additionally argues that:

*Schluter teaches away from including sockets within the anchoring members (brackets)*

Examiner respectfully disagrees. If the plug and socket are reversed within the bracket arrangement, then the connection will provide the same coverage and same reasonably level surface as originally disclosed.

Applicant additionally argues that:

*the supporting bridge... is not along the entire length of the plug*

Examiner respectfully disagrees. The Schluter reference never states that the bearing (spacing bridge) is not along the entire length of the plug. Figure 4 only shows a cross-section of the expansion joint of Schluter, hence could not possibly show the full length of the plug.

***Allowable Subject Matter***

Claims 8, 10, 13, 15, 18, 21, 24, and 25 are allowed.

Claims 8, 10, and 13 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims. It is suggested that the applicant amend the claim to replace "the third member is generally perpendicular to the fourth member" with --the longitudinal axis of the elongated portion of the third member is generally perpendicular to the longitudinal axis of the elongated portion the fourth member--.

The following is a statement of reasons for the indication of allowable subject matter:

As to Claims 15 and 18. The primary reason for the allowance of the claims is the inclusion of the limitation of a first cylindrical plug and a second cylindrical socket, respectively, being "generally perpendicular to the first cylindrical socket" (Claims 15 and 18, Line 8). which is not found in the prior art references. The prior art of record, Schluter, discloses a joint cover having a first, second, and central bracket being secured to each other by a plug and socket in a parallel relationship, but does not show a first cylindrical plug and a second cylindrical socket, respectively, being "generally perpendicular to the first cylindrical socket".

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As to Claim 21. The primary reason for the allowance of the claims is the inclusion of the limitation of a first cylindrical plug and a second cylindrical socket, respectively, being “generally perpendicular to the first cylindrical socket” (Claim 21, Line 8). which is not found in the prior art references. The prior art of record, Schluter, discloses a joint cover having a first, second, and central bracket being secured to each other by a plug and socket in a parallel relationship, but does not show a second cylindrical plug, respectively to be “generally perpendicular to the first cylindrical plug”.

As to Claim 24. The primary reason for the allowance of the claims is the inclusion of the limitation of a central bracket bridging a joint formed between the first surface and the second surface, which is not found in the prior art references. The prior art of record, Schluter, discloses a central bracket bridging a joint formed between the first surface and the second surface.

As to Claim 25. The primary reason for the allowance of the claims is the inclusion of the limitation of a central bracket bridging a joint formed between the first surface and the second surface, which is not found in the prior art references. The prior art of record, Schluter, discloses the lengths of the first socket and the first plug being equal and the lengths of the second socket second plug being equal.

No teaching or suggestion, absent the applicant's own disclosure to modify the joint cover as disclosed by Schluter to have the aforementioned elemental features.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 4537003 to Huber et al. cited to show a similar expansion joint having a plug and socket connection.

U.S. Patent No. 3957241 to Morris cited to show a plug and socket joint utilizing a bearing.

U.S. Patent No. 4566242 to Dunsworth cited to show a similar expansion joint having a plug and socket connection between a first and second bracket.

U.S. Patent No. 4956955 to Ohmatsu cited to show a similar expansion joint having a plug and socket connection.

U.S. Patent No. 5383738 to Herbermann cited to show a joint having a plug and socket connection between a first and second bracket.

U.S. Patent No. 5657598 to Wilbs et al. cited to show a similar expansion joint having a plug and socket connection.

U.S. Patent No. 6357192 to Schluter cited to show a similar expansion joint having a plug and socket connection.

U.S. Patent Application Publication No. 2003/0077110 to Knowles cited to show a similar expansion joint having a plug and socket connection.

U.S. Patent Application Publication No. 2003/0156890 to Tucker cited to show a joint having a connection at a ninety degree angle between two elements of the joint.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joshua T. Kennedy whose telephone number is (571) 272-8297. The examiner can normally be reached on M-F: 7am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571) 272-7087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JTK  
6/28/2005

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